IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 9962 of 2004

Between:

Y.V. Ramana S/o. Ramu Naidu
Licence holder of M/s Bhavani Wines R/o. Kundram (V) Anakapalli (M)
Visakhapatnam District.

..... PETITIONER

AND

1 The Proh.&. Excise Superintendent, Visakhapatnam.
2 Station House Officer, Proh and Excise, Anakapalli (V) & (M)

Visakhapatnam District.
3 SDPEO Chodavaram, Visakhapatnam.
4 The Asst.Commissioner of Proh. and Excise (Enft),

Visakhapatnam.
5 The Dy. Commissioner of Proh. and Excise. Visakhapatnam.
6 The Commissioner of Proh. and Excise, Hyderabad.
7 S.Gangu Naidu, S/o. Late Paradeshi

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ more particularly one in the nature of writ of Mandamus declaring the action of the 2nd and 3rd respondents herein in forcing the petitioner to transfer the license of M/s Bhavani Wines, Kundram (V) Anakapalli (M) Visakhapatnam District, in Form No.IL/24 in favour of the 7th respondent as illegal, arbitrary and abuse of powers and consequently direct the respondents herein not to interfere with petitioner's lawful business of M/s Bhavani Wines, Kundram (V) Anakapalli (M) Visakhapatnam District in Form No.IL/24.

Counsel for the Petitioner: MR.T.BHEEMSEN

Counsel for the Respondents No 1 TO 6.: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.7: MR. E.V.Bhagiratha Rao,

The Court made the following :

**ORAL ORDER:**

Heard the learned counsel for the petitioner and also learned Government Pleader for Excise and Sri E.V. Bhagiradha Rao, learned counsel for the contesting respondent No.7.

The petitioner herein, who claims to be licence holder, has filed this writ petition, *inter alia*, seeking writ of Mandamus to declare the action of the second and third respondents in forcing him to transfer the licence of M/S Bhavani Wines, Kundram village, Anakapalli Mandal, Vishakapanam District in Form No.IL/24 infavour of seventh respondent, as illegal and arbitrary.

The case of the petitioner is that the first respondent herein, who is the licensing authority, had issued licence for the sale of all kinds of Indian Liquor, Foreign Liquor and Beer in favour of the 7th respondent on 03-04-1998 and the said licence has been renewed from year to year and later in pursuance of the representation of 7th respondent dated 06-03-2004, the 6th respondent accepted the proposal of 7th respondent to transfer the licence in favour of the petitioner and accorded permission to the 1st respondent and accordingly, the same has been transferred on 16-03-2004. Further, it is the case of petitioner that so long as the valid licence is in his favour, it is not open for the respondents to force him to transfer the licence infavour of the 7th respondent.

It is contended by the learned counsel for the contesting respondent-7th respondent and learned Government Pleader that the licence obtained by the petitioner is by way of forgery and fraud. Further, it is contended that by taking advantage of the fact that he was only an employee, the signatures of the 7th respondent have been made use of and conveniently got transferred the licence in his favour. In pursuance of the representation of the 7th respondent, respondents have conducted detailed inquiry and found the irregularities committed by the

petitioner.

Considering the submissions on either side and also on perusal of the material on record, apart from several contentions which are sought to be urged on behalf of the both sides including as to the rights, title and interest to which they are entitled respectively, the fact remains that enquiry was conducted in pursuance of the representation of the 7th respondent herein alleging very serious facts of forgery and fraud etc. Though, inquiry was conducted by the third respondent, but, no notice or any opportunity was given to the petitioner. It is also found from the record that the statement of 7th respondent was recorded, but, no opportunity was given to the petitioner either to record the petitoner's statement or even to cross-examine the 7th respondent. Thus, the petitioner had no opportunity. It is too late in the day, to deny any opportunity to the persons whose substantive rights are sought to be interdicted that too on the allegation of forgery and fraud etc.

In the circumstances, the writ petition is allowed. The respondents are directed to conduct enquiry afresh after giving notice and opportunity to the petitioner as well as 7th respondent and pass appropriate orders in accordance with law. However, it is made clear that it is open for both the parties to substantiate their rights by any evidence. The entire exercise shall be completed within a period of one month. No costs.

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28th JULY 2004

*TSNR

That Rule Nisi has been made absolute as above.

Witness the Humbles Sri Devinder Gupta, the Chief Justice on this Wednesday the twenty eighth day of July, Two Thousand and four.

To

1 The Proh.&. Excise Superintendent, Visakhapatnam.

2 The Station House Officer, Proh and Excise Anakapalli (V) & (M)

Visakhapatnam District.

3 The SDPEO, Chodavaram, Visakhapatnam.

4 The Asst. Commissioner of Proh. and Excise (Enft),

Visakhapatnam.
5 The Dy. Commissioner of Proh. and Excise. Visakhapatnam.
6 The Commissioner of Proh. and Excise, Hyderabad.

7. Two CCs to the G.P for Prohibition and Excise, High Court

Buildings, Hyderabad (OUT)

8 Two C.D. Copies

**THE HONOURABLE SRI JUSTICE B.PRAKASH RAO**

**ORDER**

**IN**

**WRIT PETITON NO.9962 OF 2004**

**28TH JULY 004**

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